IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 742 of 2003 along with connected CWPs No. 121 of 2005, 277 of 2006, 212 of 2006 & 947 of 2005.

Judgment reserved on : 19.12.2006

Date of Decision: January 9, 2007

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1. CWP No. 742/03.

Santosh Kumar ...Petitioner

Versus.

Union of India & ors. .. Respondents.

For the Petitioner(s) : Mr. Bhuvnesh Sharma, Advocate.
For the Respondent(s): Mr. Sandeep Sharma, Assistant Solicitor General of India.

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2. CWP No. 121/05.

Madan Lal Kaushal ...Petitioner

Versus.

Union of India & ors. .. Respondents.

For the Petitioner(s) : Mr. Ajay Sharma, Advocate.
For the Respondent(s): Mr. Anup Rattan, Central Government Standing Counsel.

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3. CWP No277/06

Dhungal ...Petitioner

Versus.

Union of India & ors. .. Respondents.

For the Petitioner(s) : Mr. G.R.Palsra, Advocate.

For the Respondent(s): Mr. Janesh Mahajan, Central Government Standing Counsel.

4.. CWP No. 212/06

Bakshi Ram ...Petitioner

Versus.

Union of India & ors. .. Respondents.

For the Petitioner(s) : Mr. O.P.Thakur, Advocate with Ms.Salochana, Advocate.
For the Respondent(s): Mr. Ashwani Pathak Central Government Standing Counsel.

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5. CWP No. 947/05.

Chinta Devi ...Petitioner

Versus.

Union of India & ors. .. Respondents.

For the Petitioner(s) : Mr. Sanjiv Kuthiala, Advocate.
For the Respondent(s): Mr. Anup Rattan, Central Government Standing Counsel.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for Reporting?

For the Petitioners): (As above)

For the Respondent(s):

Deepak Gupta, J.

This judgment shall dispose of a bunch of writ petitions. All the petitioners are ex-servicemen or kin of ex-servicemen and claimed disability pension as per Pension Regulations for the Army. Their claims have been rejected by the respondents on the ground that the cases of the petitioners do not fall within the purview of the Pension Regulations. To appreciate the rival contentions of the parties, it would be necessary to refer to certain provisions of the Pension Regulations for the Army.

Regulation 173 deals with the grant of disability pension which reads as follows:-

> "173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.
>
> The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II."

Regulation 213 relates to grant of special family pension in case of death which was caused by or due to some wound

injury or disease attributable to or aggravated by Army service. Regulation 213 reads as follows:-

"213. A special family pension may be granted to the family of an individual if his death was due to or hastened by –

(a) a wound, injury or disease which was attributable to military service; or

(b) The aggravation by military service of a wound, injury or disease which existed before or arose during military service."

Regulation 173 quoted hereinabove lays down that the question whether disability attributable to or aggravated by military service has to be determined as per rules in Appendix-II. Appendix-II contains the entitlement rules with regard to disability. The relevant rules are Rules 2,3,4 and 7, which read as follows:-

"2. Disablement or death shall be accepted as due to military service provided it is certified that:-

(a) the disablement is due to a wound, injury or disease which –

i) is attributable to military service; or

ii) existed before or arose during military service and has been and remains aggravated thereby;

b) the death was due to or hastened by –

i) a wound, injury or disease which was attributable to military service; or

ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

3. There must be a causal connection between disablement and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence both direct and circumstantial will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.

7. In respect of diseases, the following rules will be observed:-

(a) Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset

of the disease and that the conditions were due to the circumstances of duty in military service.

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts, in the aetiology of the disease, and of its normal development, to the effect that conditions of service e.g. exposure, stress, climate, etc. may have had on its manifestation. Regard must also be had to the time factor.

(i) Common diseases known to be affected by exposure to weather – Diseases such as Bronchitis, Rheumatism and Nephritis – indeed most diseases of the respiratory system, joints and kidneys – are affected by climatic conditions. The period and the conditions of service at any particular place should be taken into account in determining causal connection with service.

(ii). Common diseases known to be affected by stress and strain – This should be decided with due reference to the nature of the duties and individual has had to perform in military service. It may be that in some cases the individual had been engaged on sedentary duties when they will normally not qualify.

(iii) Diseases endemic to certain areas – Diseases such as Malaria, Kalazar, Filariasis, Dysentery, Cholera, etc. are endemic in certain areas. These diseases may also be introduced by movements of infected

persons. In determining casual connection with service it will have to be established that the conditions of military service exposed the individual to the infection as a result of which he contracted the disease. Where there is medical evidence of the contraction of the diseases either prior to entry into service or while off duty or on leave or desertion or unauthorized absence, etc., attributability should not be accepted unless the disease occurs within the incubation period.

(iv). Diseases due to infections in service – Entitlement to pension will be admitted if the exposure to infection arose from the circumstances of the member's service.

(v) Disease known to be affected by dietary compulsions – The compulsions of service would also cover such cases as gastric disorders, e.g. gastritis, gastric and duodenal ulcers, where it is established that the member was unable to follow a dietary regime required for his condition. The effect of service in such cases will be limited essentially to the question of aggravation of a pre-existing constitutional condition. This will not normally apply to individuals in sedentary occupation.

(vi). Diseases which rule their course independently of external circumstances- There are certain diseases which would have

run the same course whether the individual had been in the Forces or not, e.g. Leukemia, Hodgkin's disease, etc. (see Annexure sub-para (E)). Such cases will not be accepted as aggravated by service unless it is clear that owning to exigencies of service the man did not receive treatment of a satisfactory character and standard or such treatment was so delayed as to be less effective than it should have been.

(vii). Venereal Diseases-

(1)Venereal diseases will normally be rejected but a sequela of the disease may sometimes be accepted as aggravated by service. In the case of such disease contracted during service, grounds for acceptance will rarely be found unless the member after treatment had returned to full duty and had been subjected to such strain as would produce one of the after effects of the disease sooner than would have normally been the case. The strain must have been of an exceptional nature.

(2) In the case of disease contracted before service if the member had reached an age when such a manifestation could be accepted, entitlement will not be conceded. On the other than, if the later manifestation had been produced or

hastened by the strain of service in which case there should be evidence that the strain was of an exceptional nature, entitlement may be considered on the basis of aggravation.

(3)In the case of disease due to heredity, entitlement must be determined as in para (2) above.

(4)The above refers only to late manifestations or sequela of venereal disease as Neuro-Syphilis or Cardio-vascular Syphilis.

(viii). Invalidation on account of indulgence in drugs or drinks – Entitlement shall not be conceded if the disability or death on which the claim is based, resulted from indulgence in drugs or drinks which was within one's own control."

Annexure to the rules classifies different diseases in various categories.

Category "A" relates to diseases affected by climatic conditions. Category "B" relates to disease affected by stress and strain. Category "C" relates to diseases affected by dietary compulsions. Category "D" relates to diseases affected by training, marching, etc. Category "E" relates to diseases not normally affected by service. These categories of

diseases can be and related to the various types of diseases referred to in sub rule (d) of Rule 7 supra.

Regulation 173 clearly provides that any person who is invalided from service on account of disability and whose disability is assessed at 20% or over is qualified for grant of disability pension. However, the eligibility has to be determined in terms of the eligibility rules forming part of the Appendix. Rule 2 provides that disablement or death shall be accepted as due to military service, if it is provided that the disablement is due to a wound, injury or disease which is attributable to military service or if existing before or arose during military service and has been and remains aggravated by military_service. Rule 3 provides that there must be a causal connection between disablement and military service for attributability or aggravation to be conceded. Rule 4 provides that while considering the evidence, the benefit of reasonable doubt must be given to the claimant and this benefit is to be given even more liberally in the cases of those claimants who were serving in field areas.

Rule 7 which relates to diseases, provides that even in cases where the military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, the claimant shall be entitled

to disability pension on the basis of aggravation. Sub rule (b) provides that if at the time of the individual enrolment in military service, no note has been made that the recruit is suffering from any disease then the presumption can be raised that the disease has arisen during the course of military service. However, sub rule (c) provides that even if a disease is accepted as having arisen during the military service, it must also be established that the conditions of military service determined or contributed to the onset of the disease. In other words, what it provides is that the disease is in some way attributable to or connected to the military service. Sub rule (d) gives example of various diseases and the injuries to be taken into consideration while determining the factor whether the disease is attributable to or aggravated by military service or not.

A Division Bench of this Court in **Piar Chand v. Union of India and another,** *1995 (2) S.L.J.1230* has dealt with the question with regard to the grant of disability pension.

In that case, the petitioner was invalided from military service on medical grounds and the claim of the petitioner for grant of disability pension was refused. The court came to the conclusion on the material placed before it that the disease had not only occurred during military service but also was

attributable to military service. It would also be pertinent to mention that while taking this view, the Division Bench relied upon an earlier judgment of the Court in *CWP No. 382 of 1992,* Ajit Kumar vs. Union of India, in which the court had held as follows:-

> " Rule 2, which has been noticed above, is the relevant rule for deciding the entitlement of the petitioner and all other rules referred to during the submissions of the parties only indicate the method of reaching conclusion in relation thereto. Rule 2 gives the clear indication that disablement which may not be directly due to military service is also accepted as due to military service provided certain conditions mentioned in this rule are satisfied. One of the conditions is that the disablement should be attributable to military service. But this is not the only condition. Even those cases where the disablement may not be attributable to military service, may also be brought within the purview of this rule if the condition mentioned in clause (a) (ii) remains satisfied. This clause deals with those diseases which arose during military service and have been or remain aggravated thereby. This is an independent clause by itself and, therefore, it is not necessary to hold that the disease should be attributable to military service. If that was so, there would be no necessity of this clause and clause (i) by itself would have been enough. It is well settled

that while interpreting a rule, efforts must be made to give meaning to such and every word used therein. Then the word 'or' appearing between clauses (i) and (ii) clearly indicates that these situations are in the alternative and, therefore, even if one of them is satisfied, the claimant would be entitled to the benefit thereof. In this view of the matter, this court would not agree with the learned Central Government Standing Counsel in regard to the requirement of attributability to military service for purpose of sub clause (ii) of this rule. The question, however, is whether the disease suffered by the petitioner remains aggravated by his military service. Rule 3, no doubt, requires a decision on this question to be based on causal connection would be established. But the causal connection is not between the particular work done by the petitioner, but with his service with the military as such and, therefore, the connection will have to be established not with any particular duty performed by the petitioner but with his service as such and while reaching a decision on this question benefit of doubt, if any, would be given to the claimant –petitioner in view of rule 4 of these rules."

The Court after considering a number of authorities, held as follows:-

> "Totality of the circumstances which included report of Doctors, opinion of military authorities and appreciation of the fact of aggravation of disease in the background of military service as per opinion expressed by various experts at first instance bring the case of the petitioner within the ambit of Pension Regulations and Rules described above. Otherwise also, provision of Rule 4 on the basis of the circumstances present in this case cannot be ignored at all inasmuch as the benefit of reasonable doubt if at all appearing shall be taken in favour of the claimant. That aspect of the matter also entitled the petitioner for the disablement pension."

The apex Court has considered this question in **Union of India and another v. Baljit Singh,** *(1996) 11 SCC 315*. The apex Court held as follows:-

> "It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the

> disability pension. This made amply clear from clauses (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated there-under require to be observed. Clause (c) provides that if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion.

The apex Court in **Union of India & others v. Dhir Singh China, Colonel** *(2003) 2 SCC 382* again considered in detail the question with regard to entitlement to disability pension. The said case relates to Regulation 53 which deals with granting

disability pension to officers. Regulations 53 and 173 are otherwise couched in similar language. The apex Court held thus:-

> "7. That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsory retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability elements as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly, therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the

> respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

The same question also engaged the attention of this court in **Chamel Singh versus. Union of India and others,** *Latest HLJ 2004 HP 671* wherein a Single Judge of this Court held as follows :-

> "In cases where a person had joined Army service and was not found suffering from any disease at the time of his initial recruitment and any disease having been mentioned in the service record of such a recruitee at the time of his enrolment, claim of disability pension had been generally allowed."

With due respect to the learned Single Judge, we are constrained to observe that this observation may not be correct. In case there is no note at the time of joining service that the person enrolled is suffering from any disease and he is invalided from service on medical ground at a later stage, the only presumption, which can be raised, is that the disease has arisen during the course of military service. As pointed out by the apex Court not only has it to be proved that the disease arose during military service but it has also to be shown that the same was attributable to or aggravated by military service.

It must also be shown that there is a causal connection between the disablement and the military service.

The apex Court again dealt with this question in **Controller of Defence Accounts (Pension) and others v. S.Balachandran Nair,** *(2005) 13 SCC 128*. The apex Court was dealing with a case of anxiety neorosis in which the medical board had held that the disease was constitutional in nature unconnected with service conditions. The apex Court after referring to Regulation 173 and Rules 2, 3 and 4 of the Appendix-II as well as Regulation 423 and after referring to the authorities cited above has held as follows:-

> "12. In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusions. The respondent is not entitled to disability pension."

After giving our careful consideration to the rules and regulations and the authorities of the apex Court, we hold that to be entitled to disability pension, it must be established that the disability has occurred due to a wound injury or disease which is attributable to military service or existed before or

arose during military service and has been and remains aggravated thereby.

The apex Court has clearly held that clause (c) is not disjunctive and has to be read along with clauses (a) and (b) and, therefore, even if a disease is accepted as having arisen during service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that conditions were due to the circumstances of duty in military service.

The apex Court in Dhir Singh China's case (*supra*) also held that primacy has to be given to the report of the medical board. We are, therefore, of the opinion that the Court sitting in writ jurisdiction cannot lightly interfere with the opinion of the medical board. This is not to say that the Court is bound by the opinion of the Medical Board. However, the said opinion being an opinion/finding of an expert body should not be unsettled in writ jurisdiction unless there are clear cut grounds for doing so. We also must observe that these rules provide that if two interpretations are possible, the interpretation favourable to the claimant should be taken. If the army personnel were in field service then the benefit should be given even more liberally. It is in this light of the observations that we shall not deal with the individual cases.

1. CWP No. 742/03:

In this case, the petitioner Santosh Kumar was enrolled in the Indian Army on 18.10.1982. On 12.11.1988, he was admitted in the military hospital at Amritsar and was transferred from there to military hospital at Jalandhar on 15.11.1988. He was discharged on 17.1.1989 and diagnosed as a patient of Schizophrenia. He was granted sick leave upto 14.3.1989. He was again admitted to hospital on 13.3.1989 and was discharged from service on 23.5.1989 and placed in medical category EEE with 50% disability.

Admittedly, there is no note at the time of his enrolment that he was suffering from the Schizophrenia. There is also no opinion of the doctor that this disease existed prior to his enrolment but could not be discovered. The question which arises is whether this disease was attributable to or aggravated by military service. The only allegation of the petitioner is that from 1982 to 1986, he remained posted at Ladakh in hard and difficult conditions and thereafter at Amritsar where terrorists operations were in full swing and therefore the huge stress and strain at these two places where he was posted on account of military service has resulted in the occurrence of the disease. The history recorded by the doctor itself shows that the petitioner was suffering from

abnormal behaviour and was not talking to anyone and was sleeping poorly. He was claiming that he was being harassed and he had heard voices of his villagers. He has been diagnosed as having Schizophrenia and recommended for discharge. The doctor has opined that the disease of the petitioner is a constitutional disorder and service factor have no bearing either in the constitution or aggravation of the disease.

As we have indicated above, we would not normally interfere in the opinion of the medical board but the fact remains that the disease from which the petitioner is suffering can be caused and definitely can be aggravated by stress and strain. This is a psychotic disease which falls under category "B" of the Annexures of the Appendix-II and it is termed as a disease affected by stress and strain. It is admitted that the petitioner was posted in Ladakh which is a field area from 1982 to 1986 and then he remained at Pune for about 6 months and thereafter was posted at Amritsar from 14.12.1987. This Court can take judicial notice of the fact that Amritsar was a highly terrorists infested area in those days. Even if, it may not have been declared as a field area, we feel that keeping in view the nature of the job and keeping in view the aftermath of operation Blue Star, there would have been tremendous stress

and strain on the petitioner. We also feel that the medical board has not at all considered the evidence in the light of Rule 4 of entitlement rules in Appendix-II which clearly states that the evidence both direct and substantial should be interpreted in such a manner so as to grant benefit of doubt to the petitioner. In the present case, we feel that the petitioner's case was wrongly rejected by the respondents.

This petition has also been contested on the ground of delay and laches. It is held that the pension is not a bounty and once it is settled that a person is entitled to pension then the same cannot be denied to him on the ground of delay and laches. However, while granting relief, the same can be moulded by taking into consideration the element of delay. In this case, the petitioner had been invalided on 26.5.1989 and his claim was rejected in 1990 by CCDA (P) Allahabad. He filed an appeal in 1995 which was rejected on 10th November, 1997 and thereafter he filed second appeal in 2001 which was also rejected.

Keeping in view the entire facts of the case and the fact that the present petition was filed on 31.8.2003, we direct that the petitioner shall be entitled to disability pension w.e.f. 1.9.2000 only. The entire arrears of pension along with

interest @ 7.5% shall be paid to him within three months from today.

2. CWP No. 121/04:

In this case the petitioner was recruited in the Indian Army in 1960. He was invalided out of military service on 27.5.1969 as the petitioner was suffering from Schizophrenia and placed in the medical category "EEE". The claim of the petitioner for pension was rejected by the CCDA (P) Allahabad on 13.7.1970 on the ground that the disease from which he was suffering was neither attributable to or aggravated nor connected with Army service. The appeal filed by the petitioner was rejected on 19.11.1970.

In this case, it stands proved that the petitioner was serving in field area upto March, 1967 and thereafter was posted in the headquarters of the BSF Signal Regiment, Calcutta. The disease was discovered in January 1969 while he was posted at Calcutta. He was only working as a Teleprinter operator and not doing any active service job. The medical history of the petitioner also shows that there was a disagreement between the petitioner and his father with respect to the expenditure to be incurred for his marriage. The medical record does not disclose that the disease was in any way connected with army service of the petitioner. There

is no such stress or strain of army service pointed out in this case which could be the cause of his having suffered from the disease. He was posted in a city and was doing a desk job and there was no special stress or strain attributable to or aggravated by this job. The petition is, therefore, rejected.

3. CWP No. 947 of 2005.

Petitioner in this case is a widow of ex-sepoy Ratti Ram, who was recruited in the Indian Army on 10.7.1974. He was medically invalided out of service on 2.7.1982 on account of disease "Pemphigus Vulgaris". Ratti Ram had been admitted in the hospital on 22.2.1982 when this disease was discovered and he was finally discharged on 2.7.1982. According to the respondents, the case of Ratti Ram for disability pension was rejected and rejection communicated to him on 9.12.1982. Thereafter, he filed an appeal which was rejected on 31.10.1988. Ratti Ram took no action thereafter. Ratti Ram expired on 18.11.1993. Since Ratti Ram was not getting any pension, his wife was also not granted pension. This petition has been filed by his wife.

At the very outset, it may be stated that the petitioner has stated in the writ petition that the order of rejection of her husband's appeal was never communicated to her husband. This averment cannot be accepted. A perusal of the record

shows that upto 1988, Ratti Ram, had vigorously pursued his case for the grant of disability pension. However, after dismissal of his appeal in 1988, there is no communication between him and the authorities till his death in 1983. It thus appears that Ratti Ram was satisfied and did not want to contest the appellate order. It would be pertinent to mention that Ratti Ram died more than five years after passing of the said order. In our view, to permit the wife to rake up this plea in the year 2005 is not permissible.

We have, however, gone into the merits of the case also. The disease "Pemphigus Volgaris" is a disease of the immune system. It is a skin disease. There is no material placed on record to show as to how this disease occurred. Mr. Sanjiv Kuthiala, learned counsel has done a lot of research work and has placed material on record from medical treatises and also from the internet. We have gone through this material. This material only shows that even medical scientists are not clear as to what is the cause of the disease. However, it is stated that cold and stress may aggravate the disease. There is no material on record to show that the disease was aggravated during army service. We are, therefore, constrained to reject this petition.

4. CWP No.212 of 2006.

The petitioner in this case was enrolled in the Indian Army on 15.7.1976. He was admitted to the hospital on 4.1.1980 and discharged on 12.1.1980 and was diagnosed as a patient suffering from "Traumatic Canrunctivis". For this disease itself, the petitioner was admitted in various hospitals from time to time all most till Febraury, 1981 when the disease was diagnosed as " Traumatic Canrunctivis". Thereafter the history shows that the petitioner has been admitted a number of times for 'Neorosis' (conversion reaction) and finally in 1987 with CMS Seizure and on 29.10.1987 he was diagnosed by the Military Hospital, Mhow as 'Conversion Fraction'. The petitioner was willing to continue in service but shelter job was not given to him and he was discharged from service. A constituted medical board gave its opinion that the disability of the petitioner is neither aggravated nor attributable to military service and since the disability is less than 20%, therefore, the petitioner is not entitled for grant of disability pension.

The petitioner had earlier filed CWP No. 246 of 2004 which was disposed of by this Court with a direction that the same shall be considered as an appeal. Thereafter, the respondents passed an order on 26.7.2005, the relevant portion of which reads as follows:-

> " On perusal of your service/medical documents, the committee has found that you were discharged from service w.e.f. 01 Jan 1988 on medical ground under Army Rule 13(3) item III (V) on account of ID, "NEUROSIS (CONVERSION REACTION) 300(D) v-67" WHICH WAS VIEWED BY THE Release Medical Board as "Neither attributable to nor aggravated by mil service" and assessed the degree of disablement at 6-10%. Moreover, the said ID had no casual connection with military service and the same was constitutional disorder. The committee also found that the onset of your ID was on 01 Feb 1980 in concessional area. Your posting profile indicates that there was no close link association between onset of ID and OP/HAA service. Remarks of Commanding Officer in the relevant document indicate that you were doing "General Duty" in your unit and it was not under exceptional stress and strain. Available documents do not indicate any ID has been considered as not connected with service. Therefore, you are not entitled to disability pension as per Pension Regulations 173 for Army Part I, 1961. Accordingly, the ACFA has not accepted your appeal."

It would be pertinent to mention that the Release Medical Board has assessed the degree of disablement at 6-10%. It is clear from a perusal of the Pension Regulations

that only those persons who have suffered disability of 20% or above are entitled to disability pension. In the present case, there is no material placed on record to show that the disability has not been correctly assessed. Therefore, even if it is assumed that the disability is attributable to or aggravated by army service, then also the petitioner would not be entitled to disability pension since his disability is less than 10%.

Shri Thakur has urged that the disability has not been re-assessed by the CDA, Allahabad. In this case, we find that in fact no challenge to the degree of disability has been laid anywhere in the writ petition. Shri Thakur also urges that his claim has not been rejected on the ground of disability being less than 20% but only on the ground that the disability was neither attributable nor aggravated by military service.

We do not agree with this contention. A perusal of the order dated 26.7.2005 quoted above clearly shows that after mentioning the disability, it has been stated that moreover, the same has no causal connection with military service. In our opinion, when a person claims his disability pension, he must clearly aver and state that his disability is 20%. In the petition, nowhere it has been stated that the petitioner is suffering from disability of more than 20%. Therefore, we find no merit in this writ petition and the same is accordingly rejected.

5. CWP No.277 of 2006.

In this writ petition, the petitioner was enrolled in the Indian Army on 22.9.1965 and served upto 11.10.1975 when he was invalided out of army service. As per the respondents, the petitioner was first admitted to Military Hospital, Jammu on 8.4.1975 and was transferred to Base Hospital with the diagnosis that he required psychiatric examination. On examination in the Military Hospital, Pathankot and thereafter at Jalandhar, the petitioner has been diagnosed as "Hysterical Aphonia". The disability of the petitioner has been assessed at 20% but it has been stated that the disability is not attributable to or aggravated by army service. The case of the petitioner for grant of disability pension was rejected on 11.5.1976. Thereafter the petitioner kept on sending letters but did not file an appeal though he was asked to file an appeal.

According to the respondents since the petitioner was suffering from three punishments of rigorous imprisonment of 14 days, 10 days and 7 days, i.e. total 31 days. Therefore, after taking this period, he had not completed 10 years of service.

The petitioner has unfortunately not placed on record any material on record with regard to his service. However,

the record produced by the respondents shows that by and large out of 10 years, for 7 years the petitioner has served in field service areas such as Assam, Jammu & Kashmir, Bangladesh and Muthi in J & K. The disease of Neuroris was discovered when the petitioner was serving in field areas. The medical board has not taken into consideration the requirement of Rule 4 of the Army Rules that while considering the evidence, the benefit will be given even more liberally to the claimant(s) serving in field service areas. It appears that the medical board has not taken into consideration this fact while considering the case of the petitioner. We find that the stand taken by the respondent that the petitioner had not completed minimum qualifying service of 10 years, he is not entitled to invalid pension, is not sustainable. The petitioner has not asked for invalid pension but has prayed for disability pension under Regulation No.173. The regulations relied upon do not apply to the disability pension and no material has been placed before us to show that there is any minimum qualifying service prescribed for the grant of disability pension. However, we do find that the disability of the petitioner was assessed at 20% for a period of two years as far as back as in 1975 when the petitioner was discharged from service. What is the extent of disability now is not clear. We, therefore, direct that the

petitioner shall be examined by a review medical board and in case the disability is found to be 20% or above, the petitioner shall be paid disability pension due to him Since the petition has been filed on 30.3.2006 after a lapse of 31 years, we order that the petitioner shall only be entitled to disability pension from the date of filing of the petition, if otherwise, found eligible.

All the petitions are accordingly disposed of.

(Deepak Gupta), J.

January 9, 2007. (Surinder Singh),J.

s.